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he has found such a purchaser, who has entered into a valid contract, his right to compensation cannot be defeated by the seller's misrepresentation, or by his unreasonable refusal to comply with his contract.

[Ed. Note.—For other cases, see Brokers, Cent. Dig. §§ 94-96; Dec. Dig. § 63.* 2 Va.-W. Va. Enc. Dig. 639.]

2. Brokers (§ 64*)—Compensation—Services—Completion of Sale.—Where a broker employed to sell land found a purchaser on the required conditions, but when the parties met to make the sale the purchaser refused to enter into the contract agreed on, but insisted on one materially different and less advantageous to the vendor, which the vendor refused, the broker was not entitled to commissions.

[Ed. Note.—For other cases, see Brokers, Cent. Dig. § 97; Dec. Dig. § 64.* 2 Va.-W. Va. Enc. Dig. 639.]

Error to Circuit Court, Goochland County.

Action by R. F. Vaughan against Alfred Pleasonton and another. From a judgment for defendants, plaintiff brings error. Affirmed.

Rosewell Page, John Rutherford, C. R. Sands, and D. H. & Walter Leake, for plaintiff in error.

Smith, Moncure & Gordon, for defendants in error.

SMILEY *v.* SMILEY'S ADM'X et al.

June 8, 1911.

[71 S. E. 532.]

1. Partnership (§ 305*)—Sharing Profits and Losses—Division of Capital.—The general rule, that in the absence of any agreement, express or implied, partners share profits and losses of the business equally, although they have not contributed equally to the partnership capital, does not apply to the division of partnership capital; but partners may by agreement provide for an equal share in the capital, although their contributions thereto are unequal.

[Ed. Note.—For other cases, see Partnership, Cent. Dig. §§ 703-705; Dec. Dig. § 305.* 10 Va.-W. Va. Enc. Dig. 832, 886.]

2. Reference (§ 99*)—Findings of Fact—Conclusiveness.—Where the evidence is taken before the commissioner, and is conflicting, and there are circumstances affecting the credibility of some of the witnesses, their bearing on the stand is of importance in determining the weight of their testimony, and findings of fact by the commissioner should not as a rule be disturbed.

[Ed. Note.—For other cases, see Reference, Cent. Dig. § 153; Dec. Dig. § 99.* 11 Va.-W. Va. Enc. Dig. 748, 752.]

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

Appeal from Circuit Court, Henrico County.

Action between W. A. Smiley and Alfred Smiley's administratrix and others. From a judgment sustaining exceptions to the findings of a commissioner, W. A. Smiley appeals. Reversed in part, and remanded.

R. E. Peyton, Jr., and Scott, Buchanan & Cardwell, for appellant.

C. W. Throckmorton, for appellees.

BATCHELDER et al. v. RANDOLPH.

June 8, 1911.

[71 S. E. 533.]

1. Mortgages (§ 37*)—Deeds as Mortgages—Parol Evidence—Admissibility.—A deed absolute in form may be shown by parol evidence to be a mortgage, and the evidence is not restricted to cases of fraud, accident, or mistake.

[Ed. Note.—For other cases, see Mortgages, Cent. Dig. §§ 97-107; Dec. Dig. § 37.* 10 Va.-W. Va. Enc. Dig. 35.]

2. Mortgages (§ 36*)—Deeds as Mortgages—Presumptions—Evidence.—A deed absolute in form is presumptively a deed, and parol evidence to show that it is a mortgage must be clear and convincing.

[Ed. Note.—For other cases, see Mortgages, Cent. Dig. §§ 95, 96; Dec. Dig. § 36.* 10 Va.-W. Va. Enc. Dig. 36.]

3. Mortgages (§ 32*)—Deeds as Mortgages.—Whether a deed absolute in form is to be regarded as a mortgage depends on the circumstances under which it was made and the relations and negotiations between the parties.

[Ed. Note.—For other cases, see Mortgages, Cent. Dig. §§ 60-66, 84-94; Dec. Dig. § 32.* 10 Va.-W. Va. Enc. Dig. 31.]

4. Mortgages (§ 38*)—Deeds as Mortgages—Evidence—Sufficiency.—Evidence held to support a finding that a deed absolute in form was a mortgage.

[Ed. Note.—For other cases, see Mortgages, Cent. Dig. §§ 108-111; Dec. Dig. § 38.* 10 Va.-W. Va. Enc. Dig. 36.]

Appeal from Circuit Court, Norfolk County.

Suit by E. F. Randolph against B. F. Batchelder and others. From a decree for plaintiff, defendants appeal. Affirmed.

Frick & Williams, for appellants.

Frank L. Crocker and John W. Harper, for appellee.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.